

**AMENDMENTS TO THE DRAWINGS:**

The attached sheets of drawings include a change to Figure 4A. The combiner originally labeled 402 is now labeled 404. No new matter has been added. The replacement sheets, which include Figures 1 – 12, replace the original sheets including Figures 1 – 12.

Attachment: 14 Replacement Sheets

## REMARKS

Claims 40, 56, and 57 have been amended to clarify the subject matter regarded as the invention. Claims 1 – 63 are pending.

The Examiner has rejected claim 63 under 35 U.S.C. 101 for being directed towards non-statutory subject matter. MPEP 2106.01 states, “In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory.” Claim 63 recites, “the computer program product being embodied in a computer-readable medium and comprising computer instructions for...” and it is believed that claim 63 is directed towards statutory subject matter.

The Examiner has rejected independent claims 1, 57 – 59, and 63 under 35 U.S.C. 102(e) based on Vinton et al.

The rejection is respectfully traversed. Claims 1, 58, 59, and 63 recite, “detecting a *transient audio event* in a first portion of the audio signal” and “modifying said first portion of the audio signal in accordance with the graded response.” In one example, a transient audio event is the sound of a drumstick hitting a drum and a user wants to (de)emphasize the transient audio event. See, e.g., page 1, line 13 – page 2, line 13. Vinton et al. describe controlling the loudness of speech in an audio signal by classifying segments as being either a speech or a non-speech segment. See, e.g., paragraph [0043]. The Examiner has cited paragraph [0133] of Vinton et al. as describing the step of detecting, but what is disclosed in that paragraph is:

Alternatively, the classification technique may be applied to contiguous non-overlapping variable-length blocks, to overlapping blocks of fixed or variable length, or to non-contiguous blocks of fixed or varying length. For example, the block length may be adapted in response to transients, pauses or intervals of little or no audio energy so that the audio information in each block is more stationary.

This is not “detecting a transient audio event in a first portion of the audio signal” as recited in claims 1, 58, 59, and 63. For example, transient audio events and speech do not always have the same properties or characteristics. In paragraph [0060], Vinton et al. describe how, “the average squared  $l_2$ -norm of the weighted spectral flux exploits the fact that speech

normally has a rapidly varying spectrum.” Vinton et al. is looking for speech by trying to find a continually, rapidly varying spectrum. A transient audio event (e.g., the sound of a drum) does not necessarily have that property, and what is detected by Vinton et al. is different from what is detected in claims 1, 58, 59, and 63. In addition, to the extent Vinton mentions transients it is in the context of varying a detection window to more faithfully detect and determine a modification to be made to a speech component, not the transient per se. As a result, any response determined by Vinton et al. is not “a graded response to the detected transient audio event” itself, as recited in claims 1, 58, 59, and 63, and is instead a response to a speech component that the presence of transients and other information are used to detect. It is therefore believed that claims 1, 58, 59, and 63 are allowable.

Claims 2 – 49 and 60 – 62 depend from claims 1 and 59 and are believed to be allowable for the same reasons described above.

With respect to the rejection of independent claim 57, the rejection is respectfully traversed. In paragraph [0045] cited by the Examiner, the segments that are modified are either a speech segment or a non-speech segment. This is not “modifying said second portion of said audio signal, wherein there is a transient audio event associated with the second portion” as recited by amended claim 57. It is therefore believed that claim 57 is allowable.

The Examiner has rejected independent claim 50 under 35 U.S.C. 103(a) based on Vinton et al. in view of Dowling et al. (US publication no. 2004/0212320).

The rejection is respectfully traversed. It is believed that the 2004/0212320 publication was erroneously published with material from US application serial no. 10/163,168 filed on June 4, 2002 entitled STREAM SEGREGATION FOR STEREO SIGNALS, which happens to be assigned to the same assignee as the present application. Compare, for example, the specification of the 2004/0212320 publication with the specification filed in the Dowling et al. application and the specification filed in the 10/163,168 application. The 10/163,168 application was intended to remain confidential and was filed with a non-publication request, which was acknowledged in the filing receipt mailed on June 23, 2004. Moreover, even if the applicants/assignee had intended for US application serial no. 10/163,168 to be published, it would only be citable as a 102(e) reference and could not properly be cited as a 103(a) reference against the above-captioned application because both applications are assigned to a common

assignee. 35 USC 103(a). It is therefore believed that the cited reference is not proper prior art and applicants respectfully request that any rejection based thereon be withdrawn.

Claims 51 – 56 depend from claim 50 and are believed to be allowable for the same reasons described above.

In light of the circumstances regarding the 2004/0212320 publication, applicants request the next Office Action be non-final. Through no fault of their own, applicants have not been afforded an opportunity for substantive examination for at least some of the claims in the Office Action mailed on February 8, 2007.

The Examiner has objected to the drawings. Replacement sheets for Figures 1 – 12 are enclosed herein and it is believed the Examiner's objection is overcome.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

Dated: 5/8/07

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